

To: The Motor Vehicle Dealer Community

From: Bruce Gould
Executive Director
Motor Vehicle Dealer (MVD) Board

Re: New MVD Board Approved Resolution

On January 13, 2003, the MVD Board passed a salesperson license resolution, which requires all persons licensed by the MVD Board as *salespersons* be employed by a dealer (dealership) as a *wage employee* (IRS form W-2), and not as an *independent contractor* (IRS form 1099), as defined in the United States Department of Treasury, Internal Revenue Service (IRS) Publication 1779.

A full copy of this resolution may be found on the backside of this memo. Internal Revenue Service (IRS) Publication 1779 may be accessed from our website at www.mvdb.vipnet.org under the *Special Reports* button.

Therefore, effective April 1, 2003, all salespersons employed by a dealer must be classified as a wage employee, and issued an IRS form W-2 as proof of employment status. Failure to comply will result in a written warning; and subsequent occurrences may result in civil penalties, suspension, or revocation of your dealer license.

By June 30, 2003, all original and renewal dealer and salesperson license applicants will be required to certify on the licensing applications that they are in compliance with this resolution. Falsified certifications will be considered material misstatements under § 46.2-1575.1 that could result in a \$1,000.00 civil penalty being levied, your license being suspended, or ultimately revoked.

Please take the time to fully review the attached resolution, and visit our website for a copy of IRS Publication 1779. There is no need for you to contact the MVDB office to notify us that you are in compliance. However, should you have questions in general concerning this resolution, please contact me at the number listed below or toll free at (877) 270-0203.

Salesperson License Resolution
January 13, 2003

WHEREAS the Virginia Motor Vehicle Dealer Act defines a salesperson as “. . . any person who is licensed as and **employed** (emphasis added) as a salesperson by a motor vehicle dealer . . . “; and

WHEREAS Sections 46.2-1518; 46.2-1537; 46.2-1538; and 46.2-1546 of the Motor Vehicle Dealer Act refer to salespersons “**employed**” (emphasis added) by the dealer and,

WHEREAS Section 46.2-1550 states that “employees” of the dealership are permitted to use dealer license plates; and

WHEREAS independent contractors act independently, buying and selling motor vehicles from locations other than the dealer’s licensed location and tend not to maintain records at the dealership location; and

WHEREAS independent contractors oftentimes use their own funds and compensate the dealer from which their license is issued; and

WHEREAS United States Department of the Treasury Internal Revenue Service (IRS) Publication 1779 states that an individual who is an “independent contractor” is not an employee; and

WHEREAS the Motor Vehicle Dealer Board Chairman’s Task Force on Licensing has recommended that the Board implement a policy whereby all salespersons must be employed by the dealership as a wage employee and not as an independent contractor.

NOW THEREFORE BE IT RESOLVED that all dealers be notified by mail that by March 1, 2003, all salespersons must be employed by the dealer as a wage employee and not as an independent contractor and that failure to comply could result in a civil penalty or suspension or revocation of the dealer’s license and

NOW THEREFORE BE IT RESOLVED that the Motor Vehicle Dealer Board staff develop a system to ensure that at the time of the issuance of an original license and at the time of renewal of an existing license, that all licensed salespersons for dealers be employed by the dealer and be issued an IRS Form W-2.